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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996ASSOCIATES COMMERCIAL CORPORATION,
Petitioner,

v.

ELRAY RASH AND JEAN E. RASH,
*Respondents.*On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

REPLY BRIEF OF PETITIONER

BEN L. ADERHOLT
CHAMBERLAIN, HRDLICKA,
WHITE, WILLIAMS & MARTIN
1200 Smith Street
Suite 1400
Houston, Texas 77002
(713) 658-1818

CARTER G. PHILLIPS *
SHALOM L. KOHN
DAVID M. SCHIFFMAN
JEFFREY C. STEEN
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

*Counsel for Petitioner
Associates Commercial
Corporation*

* Counsel of Record

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OCTOBER TERM, 1996

No. 96-454

ASSOCIATES COMMERCIAL CORPORATION,
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ELRAY RASH AND JEAN E. RASH,
Respondents.

On Petition for a Writ of Certiorari to the
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REPLY BRIEF OF PETITIONER

The issue presented in this case—as described by the bankruptcy court, the district court, the court of appeals panel and the *en banc* Fifth Circuit—is “whether the appropriate standard of valuation of a vehicle in Chapter 13 is the retail or the wholesale value.” Pet. App. 111a. See *id.* at 84a (district court); *id.* at 102a (panel opinion); *id.* at 2a (*en banc*). That issue has created an extraordinary conflict between the Fifth Circuit *en banc* and the Ninth Circuit *en banc*—to which, just recently, the Seventh Circuit added yet a third point of view. *In re Hoskins*, 1996 WL 714104 (7th Cir. Dec. 12, 1996) (use of value midway between retail and wholesale value). Indeed, the United States has urged the Court to grant the petition in this case because it is frequently a creditor and the issue presented here recurs often. U.S. Br. 7. It is difficult to imagine a case more worthy of certiorari.

Respondents offer four reasons to deny the petition. None remotely has merit.

1. Respondents assert (Opp. 3-5) that the record in this case does not properly frame the legal question presented. In making this claim, respondents simply ignore the 119 pages in the appendix to the petition analyzing the valuation questions strictly as a matter of law.

Specifically, respondents assert that petitioner's proof concerning the value of the collateral in the hands of respondents was not "worthy of weight." The argument is unaccompanied by any citation because it has no support. As the bankruptcy court makes absolutely clear "testimony indicates . . . the truck has a wholesale value of \$31,875.00 and a retail value of \$42,500." Pet. App. 111a. This factual dispute was then resolved strictly as a matter of law in every court up to this one. The facts have thus presented a simple and completely suitable vehicle for resolving the legal issue presented by petitioner.¹

2. Respondents' suggestion (Opp. 5-7) that the conflict in the circuits is "illusory" or "shallow" is mere wishful thinking. Respondents concede that *In re Trimble*, 50 F.3d 530 (8th Cir. 1995), is flatly inconsistent with the decision below, but urge the Court to ignore that conflict because the Eighth Circuit might someday adopt the view of the Fifth Circuit.

That suggestion is hard to take seriously after *In re Taffi*, 96 F.3d 1190 (9th Cir. 1996) (*en banc*), petition for cert. filed (U.S. Oct. 31, 1996) (No. 96-881), where

¹ Respondents' basic misunderstanding is revealed in their assertion "that they have argued throughout the appeals that the bankruptcy court's use of [their] appraisal . . . was not clearly erroneous." Opp. 5. Even if true, the fact remains that each court that has faced the question has decided it as a matter of law, and not as a question of fact.

the full Ninth Circuit categorically and unanimously rejected the holding and reasoning of the majority in this case. Nor can *Taffi* be distinguished.² Respondents' contention is even harder to take seriously now that the Seventh Circuit has recognized the conflict between this case and *Taffi*, and adopted an intermediate position between them. *In re Hoskins*, 1996 WL 714104 (7th Cir. Dec. 12, 1996). The key issue in those cases is thus precisely the same as here—the proper method of valuing property that the debtor proposes to keep. On that issue of statutory construction, the Ninth, Fifth, and now the Seventh Circuits are hopelessly conflicted.

3. In the petition, petitioner showed (Pet. 8-11) that the plain language and structure of 11 U.S.C. § 506(a) strongly support its position concerning the proper method of valuation. Petitioner also demonstrated that its interpretation is supported by at least three prior opinions of this Court. Pet. 14-15. In asserting that petitioner's legal reasoning suffers "fundamental flaws," respondents neither quote the language of the statute, analyze its structure, nor even discuss this Court's opinions. In any event, the strength of petitioner's "legal reasoning" is not the issue on certiorari. Suffice it to say that petitioner's arguments have been accepted by the Ninth Circuit *en banc* (in the wake of the Fifth Circuit's decision here), by three other circuits and by the Solicitor General.

4. Respondents argue (Opp. 8-9) that *amicus*' "policy" arguments are flawed. While attacking the position taken by lenders in support of the petition on the ground that their arguments lack "proper statistical substantiation,"

² Respondents' proposed distinctions—based on the nature of the IRS' priority in bankruptcy and the difference between real and personal property—are facially irrelevant to valuation and are based on nothing in the *Taffi* court's opinion. The United States certainly saw no distinction between those cases when it urged the Court to grant the petition in this case to resolve this conflict in the circuits.

respondents choose to ignore the data presented by the United States that proves that the issue here is a recurring one. U.S. Br. 7. Those are the only data relevant to certiorari, and they clearly support further review by this Court.

At the end of the day, all of the circuits are "in harmony . . . except the Fifth," (*Taffi*, 96 F.3d at 1193), and now the Seventh. Only this Court can provide the uniformity that the bankruptcy laws require. Accordingly, the Court should grant certiorari.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

BEN L. ADERHOLT
CHAMBERLAIN, HRDLICKA,
WHITE, WILLIAMS & MARTIN
1200 Smith Street
Suite 1400
Houston, Texas 77002
(713) 658-1818

CARTER G. PHILLIPS *
SHALOM L. KOHN
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1722 Eye Street, N.W.
Washington, D.C. 20006
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